

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
SCRANTON DIVISION**

INTERMETRO INDUSTRIES
CORPORATION,

Plaintiff,

v.

CAPSA SOLUTIONS, LLC,
Defendant.

No. 3:13-cv-02853-RDM

(Hon. Robert D. Mariani)

JURY TRIAL DEMANDED

**DEFENDANT CAPSA SOLUTIONS, LLC'S MOTION TO DISMISS
UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendant Capsa Solutions, LLC, by its counsel, respectfully moves the Court under Federal Rule of Civil Procedure 12(b)(6) for an order dismissing Plaintiff InterMetro Industries Corporation's claims against Capsa for willful infringement because the Complaint fails to state a claim upon which relief can be granted. A proposed Order is filed herewith.

Respectfully submitted,

By: s/ Jan L. Budman II

Jayson R. Wolfgang

I.D. #62076

Jan L. Budman II

I.D. #203200

BUCHANAN INGERSOLL & ROONEY PC

409 North Second Street, Suite 500

Harrisburg, PA 17101

Scott D. Eads

OR 910400

Special admission granted

Bryan D. Beel

OR 073408

Special admission granted

PERKINS COIE LLP

1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

Attorneys for Defendant

Capsa Solutions, LLC

DATED: January 24, 2014

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CERTIFICATE OF NONCONCURRENCE

I, Jan L. Budman II, hereby certify that on January 23, 2014, my co-counsel, Bryan D. Beel (special admission granted) sought the concurrence of Glenn E. Forbis, from counsel for Plaintiff InterMetro Industries Corporation, in connection with the foregoing Motion to Dismiss, and that Mr. Forbis does not concur in the Motion.

Respectfully submitted,

By: s/Jan L. Budman II

Jayson R. Wolfgang (I.D. #62076)

Jan L. Budman II (I.D. #203200)

BUCHANAN INGERSOLL & ROONEY PC

409 North Second Street, Suite 500

Harrisburg, PA 17101

DATED: January 24, 2014

CERTIFICATE OF SERVICE

I, Jan L. Budman II, hereby certify that the foregoing document was filed via the Court's ECF/CM filing system in the above-captioned matter and that pursuant to L.R. 5.7 the Court's transmission of the Notice of Electronic Filing constitutes service of the filed document.

By: s/Jan L. Budman II
Jan L. Budman II

DATE: January 24, 2014